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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 JONATHAN E HOLTZ,

12 Plaintiff,

13 v.

14 SKANSKA USA, INC, and MAYA
EGNELL,

15 Defendants.

CASE NO. C13-5985 RJB

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS

16 This matter comes before the court on Defendants' Motion to Dismiss. Dkt. 59. The
17 court has considered the relevant documents and the remainder of the file herein.

18 **PROCEDURAL HISTORY AND MOTION**

19 On May 15, 2015, defendants filed a motion to dismiss, requesting that the court dismiss
20 all claims against them because of plaintiff's failure to prosecute the case, failure to follow the
21 Federal Rules of Civil Procedure, and failure to follow deadlines set by the court. Dkt. 59.
22 Specifically, defendants contend that plaintiff failed to serve defendants with the pretrial
23 statement by May 12, 2015, the date it was due pursuant to LCR 16(h). Defendants maintain that
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1 plaintiff's current and past failures to comply with the court's deadlines and applicable rules
2 have limited defendants' ability to prepare for trial and to prepare their pretrial statement.

3 On May 19, 2015, the court issued an order denying the parties' stipulated motion to
4 continue the trial, concluding that "[t]here is ample time remaining to prepare for the Pretrial
5 Conference on June 19, 2015, and trial on June 29, 2015." Dkt. 63, at 1. The court advised
6 counsel that they "should immediately and forthwith comply with deadlines that were missed
7 and should meet all future deadlines;" and that "[f]urther delays are not in the interest of the
8 parties, the public, or the cause of justice." Dkt. 63, at 2.

9 On May 27, 2015, plaintiff filed a response to the motion to dismiss, stating that he had
10 provided defendants with the draft of plaintiff's pretrial statement on May 16, 2015; that
11 defendants provided plaintiff with their draft on May 22, 2015; and that the parties have had
12 ample time to work out a proposed pretrial order before the June 12, 2015 deadline set by the
13 court. Dkt. 64. The proposed Agreed Pretrial Order was filed on June 12, 2015. Dkt. 73.

14 On June 11, 2015, defendants filed a reply, contending that plaintiff's argument that
15 defendants would not be prejudiced if the case were to proceed is disingenuous, given that
16 plaintiff had previously stipulated, in the parties motion to continue the trial date, that defendants
17 would be prejudiced if the case continued as scheduled. Dkt. 68.

18 DISCUSSION

19 Fed.R.Civ.P. 41(b) provides in relevant part as follows: "If the plaintiff fails to prosecute
20 or to comply with these rules or a court order, a defendant may move to dismiss the action
21 against it."

22 In determining whether dismissal under Rule 41(b) is warranted, the court should
23 consider five factors: "(1) the public's interest in expeditious resolution of litigation, (2) the
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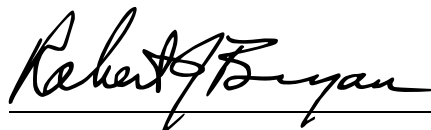
1 court's need to manage its docket, (3) the risk of prejudice to the defendants, (4) the public
2 policy favoring disposition of cases on their merits, and (5) the availability of less drastic
3 sanctions." *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (quoting *Thompson v.*
4 *Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986)).

5 This case was filed November 13, 2013. While the public interest favors expeditious
6 resolution of the litigation, deadlines were continued by the court at the request of both parties,
7 who attempted to resolve the case by mediation. The final trial date of June 29, 2015, was not
8 continued and remains as set. The court has managed its docket while accommodating the needs
9 of the parties. Although defendants maintain that they are prejudiced by plaintiff's failure to
10 provide the defense with the pretrial statement in a timely manner, the court's May 19, 2015
11 order concluded that there is ample time remaining to prepare for the pretrial conference and
12 trial. The parties' proposed agreed pretrial order has been filed. Defendants have not shown that
13 they would be prejudiced if the court denies the motion to dismiss. Public policy favors
14 disposition of the case on the merits. Finally, it does not appear that a sanction is necessary.
15 Accordingly, defendants' motion to dismiss should be denied.

16 Accordingly, it is hereby **ORDERED** that Defendants' Motion to Dismiss (Dkt. 59) is
17 **DENIED**.

18 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
19 to any party appearing *pro se* at said party's last known address.

20 Dated this 17th day of June, 2015.

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23 ROBERT J. BRYAN
24 United States District Judge